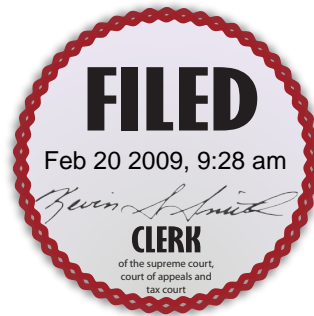


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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GREGORY HOWARD,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 67A04-0809-CR-567

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APPEAL FROM THE PUTNAM CIRCUIT COURT  
The Honorable Matthew L. Headley, Judge  
Cause No. 67C01-0801-FA-7

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February 20, 2009

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Gregory Howard (“Howard”) appeals from the trial court’s sentencing order after Howard pleaded guilty to child molesting<sup>1</sup> as a Class B felony. Howard presents the following restated issues for our review: whether the trial court improperly found Howard’s guilty plea to be an aggravating circumstance, whether it erred by enhancing his sentence, and whether his sentence is inappropriate.

We vacate Howard’s sentence and remand for further proceedings consistent with this opinion.

### **FACTS AND PROCEDURAL HISTORY**

The State charged Howard with one count of child molesting<sup>2</sup> as a Class A felony; and with one count of vicarious sexual gratification,<sup>3</sup> a Class C felony. Howard pleaded guilty to child molesting as a Class B felony in exchange for dismissal of the other count, with sentencing left to the trial court’s discretion. The trial court found Howard’s remorse, his limited criminal history, his limited education, that he was the sole provider for his family, and potential mental health issues to be mitigating circumstances. The trial court found Howard’s position of trust with the victim, that he committed the offense twice, and that he pleaded from a Class A felony to a Class B felony to be aggravating circumstances. The trial court then sentenced Howard to fifteen years in the Department of Correction, with thirteen years executed and two years suspended. Howard now appeals.

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<sup>1</sup> See Ind. Code § 35-42-4-3.

<sup>2</sup> See Ind. Code § 35-42-4-3(a)(1).

<sup>3</sup> See Ind. Code § 35-42-4-3(a).

## DISCUSSION AND DECISION

Trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.* Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Id.* An abuse of discretion occurs if the decision is “clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” *Id.*

A trial court may abuse its discretion by failing to enter a sentencing statement at all. *Id.* A trial court may also abuse its discretion by entering a sentencing statement that: (1) provides reasons for imposing a sentence, including a finding of aggravating and mitigating factors if any, but the record does not support the reasons; (2) provides reasons that are improper as a matter of law; or (3) omits reasons that are clearly supported by the record and advanced for consideration. *Id.* at 490-91. Because the trial court no longer has any obligation to “weigh” aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion in failing to “properly weigh” such factors. *Id.* at 491. Once the trial court has entered a sentencing statement,

which may or may not include the existence of aggravating and mitigating factors, it may then “impose any sentence that is. . .authorized by statute; and . . . permissible under the Constitution of the State of Indiana.” Ind. Code § 35-38-1-7.1(d). Furthermore, we are not limited to the written sentencing statement but may consider the trial court’s comments in the transcript of the sentencing proceedings. *Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002).

Our Supreme Court has held that trial courts should be “inherently aware of the fact that a guilty plea is a mitigating circumstance.” *Francis v. State*, 817 N.E.2d 235, 237 n.2 (Ind. 2004). However, a guilty plea is not inherently considered a significant mitigating circumstance. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). Furthermore, its significance as a mitigating factor will vary from case to case. *Francis*, 817 N.E.2d at 238 n.3. Where a defendant has already received a benefit in exchange for the guilty plea, the weight of a defendant’s guilty plea is reduced. *Sensback*, 720 N.E.2d at 1165. Here, it could be argued that Howard’s guilty plea is not entitled to significant weight as a mitigating factor because one of the two charges against Howard was dropped and he pleaded guilty to a lesser-included offense. However, it is still a mitigating factor, not an aggravating factor. The trial court abused its discretion by finding Howard’s guilty plea to be an aggravating circumstance. Having concluded that the trial court abused its discretion in sentencing Howard, we vacate Howard’s sentence and remand for re-sentencing.

Vacated and remanded for further proceedings consistent with this opinion.

BAKER, C.J., and NAJAM, J., concur.